

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY M. WEAVER and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 96-1750; Submitted on the Record;
Issued July 13, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs, in its January 12, 1996 decision, abused its discretion by refusing to review the case on its merits.

The Board has duly reviewed the record in the present appeal and finds that the case is not in posture for decision and must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitations of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the

¹ 5 U.S.C. § 8101.

² *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In this case appellant filed an occupational disease claim on January 6, 1995, alleging that his duties as a shipfitter, which involved lifting, pushing, pulling bending, stooping, and specifically carrying tools weighing 30 or more pounds, and lifting structures weighing 50 or more pounds, as well as working in cold weather, aggravated his degenerative joint disease of the left hip. The Office of Workers' Compensation Programs denied appellant's claim on June 6, 1995, finding that the evidence of record failed to demonstrate a causal relationship between appellant's diagnosed condition and factors of his employment. By letter dated August 16, 1995, appellant requested reconsideration of the June 6, 1995 decision. By decision dated November 1, 1995, after a merit review, the Office denied appellant's claim, finding that the evidence submitted was insufficient to warrant modification of the prior decision. By letter dated December 26, 1995, appellant requested reconsideration of the November 1, 1995 decision. No evidence was submitted with the request. By letter decision dated January 12, 1996, the Office denied appellant's request finding that appellant failed to raise substantial legal questions or submit new and relevant evidence, therefore, his December 26, 1995 request for reconsideration was insufficient to warrant a review of the prior decision.

The medical evidence in support of appellant's claim consists of employing establishment health unit records covering the period April 6, 1981 through December 5, 1994 which included five (5) notations mentioning degenerative joint disease of the left hip and hip replacement surgery on August 12, 1994; a January 25, 1963 letter by Dr. J.J. Danyo, a Board-certified orthopedic surgeon, in which he notified appellant that the chief of Orthopedics at Philadelphia general hospital was reviewing all cases of patients who had the same problem he did and would like to re-examine him and an August 12, 1963 letter in which Dr. Danyo related that appellant was admitted to the hospital on January 19, 1956 for repair of acute slipped capital femoral epiphysis on the left hip; an undated report by a doctor whose signature is illegible stating that appellant was under his care from October 28, 1986 to November 14, 1986 and was experiencing severe pain in his left hip which was treated with rest and anti-inflammatory medication; progress notes dated June 14, August 25, September 22 and November 3, 1994 by Dr. John J. McPhilemy, an osteopath, in which he diagnosed degenerative joint disease of left hip, recommended a hip replacement and related that follow-up visits revealed appellant was recovering very well from surgery; a November 11, 1994 report by Dr. McPhilemy in which he

⁴ *Id.*

related that appellant underwent left total hip replacement on August 12, 1994 and could return to full bench work duty for three months; an August 1, 1995 report by Dr. George D. Vermeire, who treated appellant for 20 years, which included a history of injury, diagnosis and causally related appellant's condition to his identified employment factors; and an undated report by Dr. McPhilemy received by the Office on October 18, 1995 in which he stated that appellant would eventually need a hip replacement regardless of his type of work due to the degenerative joint disease caused by a slipped capital femoral epiphysis surgery in 1956.

The Board finds that this case is not in posture for decision.

The evidence initially submitted with appellant's claim, was not sufficient to establish his claim, as it failed to include a rationalized medical opinion addressing a causal relationship between appellant's degenerative joint disease and his identified employment factors. Appellant subsequently submitted an August 16, 1995 report by Dr. Vermeire, an osteopath who specializes in family medicine and who has been appellant's primary physician for over 20 years. In the report, Dr. Vermeire, provided a history of injury, diagnosed degenerative joint disease and opined that appellant's diagnosed condition was causally related to his identified employment factors by acceleration. The doctor provided rationale to support his opinion stating that, "While it is clear that the fall in 1956 began the chain of events which ultimately led to the hip replacement, I believe that the type of work he did significantly contributed to the acceleration of the degenerative process." Dr. Vermeire further stated that "Carrying weights of 50 pounds, as well as, many other of the physically stressful tasks which he describes, certainly traumatized an already susceptible joint." Dr. Vermeire also stated, "Had [appellant] been able to have a job which minimized trauma to his hip, the progression of the degeneration would have been markedly slower, and thus would not have required a hip replacement at this time."

By letter dated September 14, 1995, after receiving Dr. Vermeire's report, the Office requested that appellant submit a report from his surgeon Dr. McPhilemy, "which includes his opinion, with medical reasons, on the cause of your condition. Specifically, if he feels that your work duties in federal employment contributed to your condition, and an explanation of how these duties contributed should be provided."

On October 18, 1995 the Office received appellant's October 10, 1995 letter which stated, "I had to contact Dr. McPhilemy's office on several occasions in order that he reply with your request." Accompanying appellant's letter was an undated report by Dr. McPhilemy in which he stated, "Patient, [appellant] would have eventually needed to have his hi[p] replaced regardless of the type of work he did due to the degenerative joint disease that was related to the slipped capital femoral epiphysis surgery that he had in 1956. If you have any questions please do not hesitate to contact me."

The Office, in a November 1, 1995 decision, noted that appellant's primary physician, Dr. Vermeire, opined that appellant's identified employment factors contributed to the acceleration of appellant's degenerative joint disease and resulted in hip replacement surgery sooner rather than later, and that appellant's orthopedic surgeon, Dr. McPhilemy, did not relate appellant's condition to his employment. The Office also referred to Dr. McPhilemy's progress note dated June 14, 1994 in which he did not relate appellant's condition to his employment.

The Office concluded that since Dr. McPhilemy is a specialist in the field for appellant's condition his opinion had greater probative value.

The Board finds that although Dr. McPhilemy, an osteopath, performed the hip replacement surgery on appellant, the evidence of record does not support that he is an orthopedic surgeon. In his undated report received on October 18, 1995, Dr. McPhilemy opined that appellant would have eventually needed to have his hip replaced due to degenerative joint disease that was related to the slipped capital femoral epiphysis surgery he had in 1956. Dr. McPhilemy's report, however, failed to actually address the issue of whether appellant's condition was causally related to his identified employment factors, such as by acceleration or aggravation and if such a relationship existed, whether it caused the need for hip replacement surgery to occur sooner. Since the Office, after receiving Dr. Vermeire's report which included support for causal relationship, requested an opinion from Dr. McPhilemy, it should have been very specific in asking for Dr. McPhilemy's opinion on causal relationship as it pertain to aggravation or acceleration. At least, upon receiving Dr. McPhilemy's report, the Office should have requested clarification from the doctor, specifically his definitive opinion on whether or not appellant's degenerative joint disease of the hip was aggravated, or accelerated by appellant's identified employment factors.

This case must be remanded for further development of the evidence.

On remand, the Office should contact Dr. McPhilemy and request that he clarify his undated report by providing a rationalized medical opinion on a causal relationship, as it relates to aggravation or acceleration, between appellant's degenerative joint disease and his identified employment factors and, if there is such a relationship, whether surgery became necessary sooner rather than later.

The decisions of the Office of Workers' Compensation Programs dated January 12, 1996, November 1 and June 6, 1995 are hereby set aside and the case is remanded for further development of the evidence consistent with this decision.⁵

Dated, Washington, D.C.
July 13, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁵ In view of the Board's decision on the first issue, it is unnecessary for the Board to address the second issue in this case.